



July 25, 1996

Federal Highway Administration
Office of the Chief Counsel
HCC - 10, Room 4232
400 Seventh Street S. W.
Washington, DC 20590

FEDERAL HIGHWAY
ADMINISTRATION
96 JUL 29 A 9:52
LEGS./REGS. DIV.

QA-20627

FHWA-97-2299-34

Re : SAFETY RATING TOPICS FOR COMMENT

Dear Sir or Madam:

I would like to make comments on some of the subjects that your office has under consideration for a hearing. I feel that I have an experience and background to comment on the following matters. I have been in the field of traffic safety for over thirty four years as a Minnesota State Trooper, an Independent Accident Investigator & Reconstructionist, a Loss Control Manager and Director of Safety in the trucking industry.

Should the FHWA retain the existing safety rating categories?

YES, I FEEL THAT THE PRESENT RATINGS OF SATISFACTORY, CONDITIONAL AND UNSATISFACTORY ARE ADEQUATE.

How should non-rated carriers be categorized?

THEY SHOULD BE LISTED AS "NON-RATED", BUT THE DOT SHOULD MAKE AN EFFORT TO AUDIT AND RATE THESE CARRIERS BEFORE THE DO AN AUDIT ON A CARRIER THAT HAS A SATISFACTORY RATING.

How should carriers be selected for an audit?

THE FHWA SHOULD SELECT CARRIERS FOR AN AUDIT IN THE FOLLOWING MANNER; 1st NON-RATED CARRIERS, 2nd ACCIDENT RECORD, 3rd VEHICLE OUT OF SERVICE AT INSPECTION SITES, CARRIERS, 4th DRIVER OUT OF SERVICE AT INSPECTIONS SITES, & 5th COMPLAINTS.

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Should the FHWA separate the rating procedure from the enforcement and compliance and how?

YES, AT THE FIRST AUDIT THEY SHOULD RATE CARRIERS AS SATISFACTORY, CONDITIONAL OR UNSATISFACTORY. IF A CARRIER IS RATED AS CONDITIONAL OR UNSATISFACTORY, DO NOT TAKE AND ENFORCEMENT ACTION SUCH AS FINES UNTIL AFTER THE FOLLOW-UP AUDIT. WITH THAT PROCEDURE, CARRIERS THAT MAKE AN EXTRA EFFORT TO GET INTO COMPLIANCE AND RECEIVE A SATISFACTORY RATING ON THE FOLLOW-UP AUDIT WILL NOT HAVE TO PAY A FINE. THE FINES FOR CARRIERS THAT DO NOT MAKE THIS EFFORT COULD BE SUBSTANTIALLY HIGHER.

Whether a carrier should be "rewarded" for going the extra mile in safety, and if so, how?

I THINK THAT A CARRIERS EFFORTS IN RECRUITING ONLY DRIVERS WITH GOOD MVR'S AND GOOD PAST ACCIDENT RECORDS AND THE CARRIERS ACCIDENT PREVENTION TRAINING PROGRAM, AND INCENTIVE PROGRAMS TO PROMOTE ACCIDENT FREE DRIVING SHOULD CARRY SOME POSITIVE WEIGHT DURING AN AUDIT.

What criteria carriers use to determine on-the road performance (e.g. (1) accidents, (2) accidents per million miles, (3) severity of accidents, (4) out of service violations)?

THE PRESENT SYSTEM OF BASING ON THE ROAD PERFORMANCE ON ACCIDENTS PER MILLION MILES WOULD BE FINE IF ALL CARRIERS WERE THE SAME SIZE AND TRAVELED IN THE SAME AREAS. PERHAPS A FAIRER WAY OF RATING WOULD BE THE PERCENTAGE OF ACCIDENTS AND OUT OF SERVICE VIOLATIONS BASED ON THE NUMBER OF TRUCKS IN THE FLEET. ALSO, THE SEVERITY OF THE ACCIDENT SHOULD NOT HAVE A BEARING AS:

"PREVENTABILITY IS A MATTER OF SKILL. SEVERITY IS A MATTER OF LUCK"

Should the safety rating be based solely upon accidents and other safety related criteria?

YES, CARRIER ENFORCEMENT OF DRIVERS FOR MINOR MATTERS SUCH AS FORM AND FORMAT VIOLATIONS ON LOGS, ETC. CAN TAKE UP VALUABLE TIME THAT A CARRIER COULD BETTER USE FOR ACCIDENT PREVENTION TRAINING OF THE DRIVERS.

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Should the FHWA separate preventable from non-preventable accidents in determining the accident ratio and how to determine what is non-preventable? Also of concern is the apparent subjectivity of various auditors in assessing the preventability of reportable accidents.

YES, AN NON-PREVENTABLE ACCIDENT THAT IS CLEARLY THE FAULT OF ANOTHER DRIVER SHOULD NOT BE USED AGAINST A CARRIER IN DETERMINING THE SAFETY RATING. ANOTHER CLASSIFICATION OF DIVIDED RESPONSIBILITY SHOULD BE ADDED WHERE THE ACCIDENT WAS CAUSED BY THE OTHER DRIVER VIOLATING SOME TRAFFIC LAW BUT COULD HAVE BEEN PREVENTED IF THE MOTOR CARRIER DRIVER HAD USED PROPER DEFENSIVE DRIVING TECHNIQUES.

A DOT AGENT SHOULD NOT MAKE THE CLASSIFICATION OF ACCIDENTS UNLESS THAT AGENT HAS EXPERIENCE IN INVESTIGATING ACCIDENTS AS A TRAFFIC LAW ENFORCEMENT OFFICER OR AN INSURANCE ACCIDENT INVESTIGATOR.

What should constitute a recordable accident, and should the criterion on a tow-away accident be modified as a measure of recordability?

THE PRESENT SYSTEM OF A FATALITY, INJURIES TREATED AWAY FROM THE SCENE, AND A DISABLED VEHICLE THAT REQUIRES TOWING IS OKAY. HOWEVER, I HAVE SEEN ACCIDENTS WHERE THE ONLY DAMAGE WAS A FLAT TIRE ON A PASSENGER VEHICLE BUT THE PERSON DID NOT HAVE A SPARE SO IT HAD TO BE TOWED. I THINK THAT WE SHOLD REMOVE THE DISABLED VEHICLE CRITERION IF REPAIRS COULD HAVE BEEN MADE AT THE SCENE TO MAKE THE VEHICLE DRIVE ABLE.

What weight should be given to the various safety-related factors (e.g., accidents vs. hours of service violations)?

ACCIDENTS SHOULD BE GIVEN MORE WEIGHT IN THE AUDIT THAN HOURS OF SERVICE VIOLATIONS. SERIOUS OVER HOUR VIOLATIONS, (WHERE IT IS APPARENT THAT THE DRIVER THAT THE DRIVER JUST IGNORED THE HOURS OF SERVICE REGULATIONS) SHOULD BE GIVEN MORE WEIGHT THAN MINOR OVER HOUR VIOLATIONS (E.G. A DRIVER MISCOUNTED HIS HOURS OFF DUTY OR IN THE SLEEPER BERTH AND ONLY HAD 7½ HOURS OR HE DROVE FOR 10½ BEFORE TAKING HIS REST BREAK SHOULD NOT BE GIVEN THE SAME WEIGHT AS THE SERIOUS OVER HOUR VIOLATIONS.

Should Safety Ratings should account for operating exposure. (e.g., mileage in congested areas)?

ONLY IF THIS COULD BE DONE WITHOUT PLACING AND EXTRA BOOKKEEPING BURDEN ON IRREGULAR ROUTE OVER THE ROAD CARRIERS TO SEPARATE MILES CITY MILES FROM RURAL MILES.

How FHWA should move from paperwork compliance to a performance- orientated system?

This could be done by placing more emphasis on problems on the road such as accidents, and vehicle out on service violations than on paperwork violations.

How FHWA should sample a carriers log's to determine compliance, (e.g., random and selected samples?)

IT SHOULD BE ON A RANDOM BASIS. WHEN THE AUDITORS USE A SELECTIVE METHOD THEY JUST CHECK THE LOG'S OF DRIVERS THAT WERE PUT OUT OF SERVICE OR WHO HAVE BEEN INVOLVED IN AN ACCIDENT. WITH THIS METHOD THEY ONLY AUDIT THE PROBLEM DRIVERS AND MISS MANY OF THE CARRIES GOOD DRIVERS. THIS MAKES A CARRIER LOOK A LOT WORSE THAN IT IS.

Should the FHWA should extend it's investigative powers to third parties, (e.g. shippers)

YES, MANY OF A CARRIERS OVER HOUR VIOLATIONS ARE CAUSED BY TRYING TO MEET SHIPPERS DELIVERY APPOINTMENT SCHEDULES WHICH WILL FORCE A DRIVER TO VIOLATE THE HOURS OF SERVICE REGULATIONS. WE HAVE HEARD OF MANY SHIPPERS & FREIGHT BROKERS WHO WILL SAY, "IF YOU CAN'T MAKE THIS DELIVERY BY THE TIME WE PROMISED THE CONSIGNEE, I'LL FIND A CARRIER WHO WILL".

ALSO, SHIPPERS SHOULD HAVE SCALES LOCATED AT OR NEAR THEIR FACILITIES AND HAVE THEIR DOCK PERSONNEL PROPERLY TRAINED TO LOAD TRAILERS SO THAT THEY ARE LEGAL FOR AXEL WEIGHTS, GROSS VEHICLE WEIGHT AND THE BRIDGE LAW. TOO OFTEN A CARRIER HAS TO PULL A TRAILER ILLEGALLY SEVERAL MILES TO A SCALE ONLY TO FIND OUT THAT IT IS OVER WEIGHT, THEN RETURN SEVERAL MILES AT ITS OWN EXPENSES TO HAVE THE CARGO RELOCATED ON THE TRAILER OR HAVE PART OF THE CARGO REMOVED.

How should the FHWA handle investigations based upon employee complaints, (e.g., whether it should disclose the complaint and details of the complaint, and whether it should be used as the basis of a full blown compliance audit)?

THE FHWA SHOULD PROVIDE THE CARRIER WITH A COPY OF THE COMPLAINT AND ALLOW THE CARRIER TO RESPOND TO THE COMPLAINT IN WRITING. ONE COMPLAINT SHOULD NOT TRIGGER A FULL BLOWN AUDIT. IN MOST CASES, THE COMPLAINT WAS FROM A DISSATISFIED DRIVER AND IS NOT VALID.

What factors that should be used to mitigate violations (e.g., carrier has already dismissed a driver who built up several log violations)?

IF A CARRIER FOUND THE VIOLATIONS THROUGH ITS OWN LOG AUDIT PROCEDURES, AND HAS TAKEN CORRECTIVE ACTION SUCH AS ADDITIONAL TRAINING, SUSPENSION OR DISMISSAL OF THE DRIVER, THAT DRIVERS VIOLATION SHOULD NOT BE HELD AGAINST THE CARRIER DURING A COMPLIANCE AUDIT.

Should the FHWA place penalties for log book violations against the driver personally?

YES, MOST DRIVERS DO NOT CARE IF THE CARRIER HAS TO PAY A FINE AND THEREFORE THEY HAVE NO INCENTIVE TO COMPLY WITH THE REGULATIONS. IF DRIVERS KNOWS THAT HE/SHE MAY BE FINED AS THE RESULT OF AN AUDIT, THEY WILL BE MORE LIKELY TO "DRIVE IT LEGAL AND LOG IT AS THEY DRIVE IT".

How can the FHWA distinguish between log violations that are caused by mistake/error/omission and those due to intentional falsification?

COMMON SENSE BY THE AUDITOR DURING AN AUDIT SHOULD BE ABLE TO DISTINGUISH BETWEEN ERRORS AND OUTRIGHT FALSIFICATION. OVER HOUR VIOLATIONS THAT ARE DUE TO OBVIOUS MISTAKES SUCH AS ONLY HAVING 7½ HOURS OFF DUTY BEFORE DRIVING 10 HOURS SHOULD ONLY CARRY A SMALL AMOUNT OF WEIGHT AGAINST THE CARRIER DURING THE AUDIT. OBVIOUS FALSIFICATIONS SUCH AS TOW RECEIPTS OR OTHER DATE STAMPED DOCUMENTS BEING SEVERAL HOURS OVER THE PERMITTED DUTY TIME SHOULD THE SHOULD CARRY MUCH MORE WEIGHT IN THE AUDIT. HOWEVER, IF IT IS APPARENT THAT THE CARRIER IS TRYING TO ELIMINATE THESE FALSIFICATION BY RETURNING THE TOLL RECEIPTS UNPAID TO THE DRIVER ALONG WITH WARNING AND VIOLATION LETTERS, AND USING A PROGRESSIVE DISCIPLINARY POLICY, THE FINES, IF ANY SHOULD BE ASSESSED AGAINST THE DRIVER.

Is there is a need for formalizing the practice of deferring a poor rating to give the carrier a chance to implement corrective action?

YES, IF A CARRIER RECEIVES A CONDITIONAL OR AN UNSATISFACTORY RATING AT THE INITIAL AUDIT, FINES AND PENALTIES SHOULD BE DEFERRED UNTIL THE FOLLOW-UP AUDIT TO GIVE THE CARRIER AN OPPORTUNITY TO MAKE CORRECTIONS. CARRIERS THAT ARE WILLING TO TAKE THE NECESSARY STEPS TO IMPROVE SHOULD NOT BE PUNISHED. CARRIERS THAT MAKE NO EFFORT TO OPERATE SAFELY OR IN COMPLIANCE.

How to qualify the inaccuracy of the time stamps on some external documents (toll receipts, fuel tickets) over drivers logs and other internal documents?

IT SHOULD BE OBVIOUS TO A COMPETENT AUDITOR WHEN ALL OTHER DOCUMENTS MATCH THE DRIVERS LOGS BUT ONE TOLL RECEIPT IS OFF, THAT THE MISTAKE IS ON THAT TOLL RECEIPT, NOT THE DRIVERS LOGS. IN SOME AREAS TOLL BOOTH OPERATORS PRE PRINT THE TOLL RECEIPTS TO PREVENT A TRAFFIC DELAY AT THE TOLL BOOTH. NEITHER DRIVERS OR CARRIERS SHOULD BE PENALIZED FOR THIS PRACTICE AS THEY HAVE NO CONTROL OVER THE PRACTICES OF THE TOLL BOOTH OPERATORS.

Should the FHWA establish an educational program to help carriers improve their operation to improve there safety rating?

SEVERAL PRIVATE FIRMS SUCH AS J. J. KELLER AND MANY INSURANCE COMPANIES HAVE TRAINING MATERIAL AVAILABLE. MOST SAFETY DIRECTORS KNOW THE REGULATIONS AND ATTEMPT TO KEEP THEIR COMPANIES IN COMPLIANCE. MANY TIMES THE PROBLEMS ORIGINATE WHEN A SHIPPER PLACE UNREASONABLE DEMANDS ON THE CARRIER. THE EDUCATIONAL PROGRAMS SHOULD TARGET THE SHIPPERS.

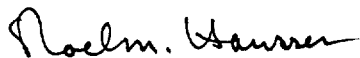
Is there is a relationship between hours of service and your accident rate?

WE HAVE NOT FOUND ANY.

Should the post accident Drug and Alcohol regulations be changed?

WHEN A DRIVER IS INVOLVED IN A DOT REPORTABLE ACCIDENT AND RECEIVES A CITATION WE ARE REQUIRED TO GET AN A DRUG AND ALCOHOL SCREEN AS SOON AS PRACTICABLE. WE HAVE NO PROBLEM WITH THE DRUG SCREEN WHERE WE HAVE A MAXIMUM OF 32 HOURS. HOWEVER, IT IS SOMETIMES VERY DIFFICULT TO GET AND ALCOHOL SCREEN WITHIN THE TWO HOUR OR EIGHT HOUR TIME LIMIT. MANY TIMES WE DO NOT LEARN OF THE ACCIDENT UNTIL AFTER TWO HOURS. IF AN ACCIDENT HAPPENS LATE AT NIGH IN A REMOTE RURAL AREA IT IS ALMOST IMPOSSIBLE TO FIND A BREATHALYSER OPERATOR AT THAT TIME. I HAVE TALKED TO THE POLICE FOLLOWING ACCIDENTS AND HAVE ASKED THEM TO DO THE ALCOHOL SCREEN ONLY TO BE TOLD, "WHY, YOUR DRIVER HAS NOT BEEN DRINKING"? I WOULD LIKE TO SEE THE LAW CHANGED TO PUT THE BURDEN OF SECURING AN ALCOHOL TEST WITHIN THE TIME LIMITS ON THE INVESTIGATING POLICE OFFICER.

Sincerley,



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